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Bill: HB0640
Title: Criminal Law - Failure to Obey a Reasonable and Lawful Order - Repeal
Date: February 12, 2021
Committee: Judiciary Committee
Position: Support

To the Honorable Delegate Luke Clippinger and Esteemed Members of the Committee:

FreeState Justice is a statewide legal advocacy organization that seeks to improve the lives of low-income lesbian, gay, bisexual, transgender, and queer ("LGBTQ") Marylanders. We work across Maryland to provide free civil legal aid to LGBTQ Marylanders with low incomes facing discrimination. Those clients include community members, especially Black and transgender folks, seeking criminal expungement services for a constellation of nuisance-related crimes.

Criminal expungement services are our second most common case type, serving over 100 clients on this issue in the past three years. Failure to Obey a Reasonable and Lawful Order is one of the more common offenses. Many community members feel targeted or criminalized for existing as queer or trans people in public spaces. In our 2016 statewide needs assessment on Maryland LGBTQ community members, many trans folks described being profiled by the police, with several respondents reporting multiple instances of being harassed on their property for "sitting/walking while being trans."¹

Studies conducted both statewide and nationally have shown that LGBTQ Marylanders, particularly trans Marylanders of color, report negative experiences with police officers. These interactions are often compounded by race and gender identity. A 2016 Department of Justice report on the Baltimore Police Department (BPD) found that "the transgender community [reported] that their interactions with BPD are degrading and dehumanizing and that. As a result, transgender individuals are afraid to

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¹ Agostini, M. S. (2018). Pushing Back: A Blue Print for Change, Lessons Learned from the 2016 Needs Assessment of LGBTQ Marylanders. <https://freestate-justice.org/wp-content/uploads/2019/03/Pushing-Back-A-Blueprint-for-Change.pdf>.

report a crime to law enforcement."² The same report found that the Baltimore Police Department has a consistent pattern of racial profiling and over-policing Black citizens. Police officers were found to stop Black citizens three times more than their White counterparts.³ These findings align with national trends. Recent studies have found a historical reluctance on the part of LGBTQ people and people of color to turn to the police for help. In 2012, Lambda Legal conducted research on police interactions and found that 13% of cisgender individuals in their sample reported being verbally assaulted by the police, 2% experienced sexual assault, and 3% reported physical assault by law enforcement.⁴ The same study also found that 36% of transgender women and 27% of transgender, nonbinary, and gender-nonconforming people of color had been verbally assaulted during police interactions.⁵

These findings were further corroborated in the 2015 National Transgender Discrimination Survey that found for transgender Marylanders, 45% reported being uncomfortable seeking police assistance and 13% reporting harassment by police officers.⁶ This same survey found that nationally, Black and Latin/x trans folks reported being incarcerated due only to gender identity/expression at 41% and 21%, respectively, with 47% of Black trans respondents reported being sent to jail or prison "for any reason."⁷

As mentioned, race and gender different compact experiences of feeling profiled, targeted and harassed by police officers and other community members. As the LGBTQ community is disproportionately impacted by poverty, unemployment, and incarceration, FreeState Justice urges this offense's repeal as it creates a broad, vague, and discretionary avenue for police officers to enforce anti-LGBTQ bias. Repealing this offense does not remove police officers' ability to arrest individuals on the actual criminal offense that is occurring. Additionally, in publicly available data compiled by the People's Commission to Decriminalize Maryland, 53% of cases were against Black Marylanders over the last three years.

LGBTQ Marylanders, especially trans Marylanders of color and low-income LGBTQ Marylanders, deserve safe and affirming access to public spaces and public services, including law enforcement. This legislation contributes to improving the safety and well-being of LGBTQ folks while reducing unnecessary police interactions and avenues for disproportionate incarceration. FreeState Justice supports HB0640, which will repeal the Failure to Obey a Reasonable and Lawful Order criminal charge.

2 U.S. Department of Justice, Civil Rights Division. Investigation of the Baltimore City Police Department. (August 10, 2016).

3 Ibid.

4 Lambda Legal. Protected and Served?. (2012). Retrieved <https://www.lambdalegal.org/protected-and-served>

5 Ibid.

6 National Center for Transgender Equality. Findings of the NATIONAL TRANSGENDER DISCRIMINATION SURVEY: Maryland Results. (2015) https://transequality.org/sites/default/files/docs/resources/ntds_state_md.pdf.

7 National Center for Transgender Equality. Injustice at Every Turn A Report of the National Transgender Discrimination Survey. (2015). p. 163.

https://transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf

FreeState Justice strongly urges the Committee to issue a favorable report on HB0640.

Thank you for the opportunity to comment on this critical legislation, and please do not hesitate to contact us if we can be of further assistance.

Sincerely,

A handwritten signature in black ink that reads "Jeremy LaMaster". The signature is written in a cursive style with a large, stylized initial "J".

Jeremy LaMaster (he/they)
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